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April 10, 2014

By ECF

Honorable Nicholas G. Garaufis
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In re American Express Anti-Steering Rules Antitrust Litig.*, 11-MD-2221 (NGG);
Marcus Corp. v. American Express, 13-CV-07355 (NGG)

Dear Judge Garaufis:

On behalf of Class Plaintiffs, I am writing to seek:

- (1) pursuant to Local Civil Rule 7.1(d), leave to file a memorandum of law that is up to 40 pages in length in support of our forthcoming Motion For Final Approval Of Class Settlement; and
- (2) pursuant to the Protective Order, leave to file certain documents under seal.

Our memorandum – which we will file on Tuesday, April 15 – will necessarily cover a significant amount of ground, including a detailed account of the economic benefits of the settlement, an application of the multi-factor test governing the approval of class settlement agreements, and certain objections that have been raised. With all due economy of prose, we believe that 40 pages is necessary to do justice to the facts and arguments. Separately, we will also be filing a brief (under the page limit) in support of a distinct motion for approval of attorneys' fees and costs.

In addition, we respectfully request leave to file certain documents under seal. Our economic expert's report and final approval brief will cite to certain information that has been designated by American Express and other producing parties as Highly Confidential under the Protective Order. Having pared such evidence down to the minimum that we believe necessary to make our case, we have commenced negotiating with the producing parties for permission to include the confidential documents and testimony in public court filings. Unfortunately, we already know we will not be completely successful in that endeavor, and will thus be compelled

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to file two versions of our expert report, final approval brief and select exhibits— one version sealed, and the other public and redacted.

Meanwhile, we will continue to work with the producing parties (shown below as cc's) to develop a way to provide the public with the greatest access possible to the evidence that informs our motion for final approval, subject to the applicable Protective Order. We will also engage counsel for the Individual Merchant Plaintiffs and Jeffrey Shinder, counsel for certain objectors, in that process. We propose to report back to the Court promptly -- and no later than April 24 -- regarding our progress.

We are of course available to address these issues at the convenience of the Court, including by telephone conference.

Respectfully submitted,

s/ Gary B. Friedman

Gary B. Friedman

cc: All counsel, via ECF
Robert Mason, Esq. (counsel for Visa) (by email)
Jennifer Selendy, Esq. (counsel for Discover) (by email)
Matthew Freimuth, Esq. (counsel for MasterCard) (by email)